

FILED

APR 2 1926

Argued by WM. R. STANSBURY
Joseph S. Auerbach CLERK

Supreme Court of the United States

OCTOBER TERM, 1924

No. ~~301~~ 47

SAMUEL W. LAMBERT

Appellant

against

EDWARD C. YELLOWLEY, as Acting Federal Prohibition Director; DAVID H. BLAIR, as Commissioner of Internal Revenue, and EMORY R. BUCKNER, as United States Attorney for the Southern District of New York

Appellees

BRIEF FOR APPELLANT

JOSEPH S. AUERBACH

Attorney for Appellant

JOSEPH S. AUERBACH
MARTIN A. SCHENCK
EMILY C. HOLT

Of Counsel



INDEX

	PAGE
STATEMENT OF FACTS	3
POINT I.—Beverage purpose the antithesis of medicinal use. The Eighteenth Amendment in prohibiting beverage purpose does not prohibit, or delegate the power to prohibit, medicinal use...	6
(a) Limitations inherent in the terms of the Amendment	6
(1) Limitations as to relationship	6
(2) Limitation as to purpose	7
(3) Limitation as to method of enforcement	10
(b) Preservation of medicinal use, a part of the Amendment as submitted and ratified	11
POINT II.—Prohibition of medicinal use inappropriate to reasonable enforcement of prohibition of beverage purpose	12
POINT III.—Control of medicinal practice in the States is beyond the power of the Federal Government	21
POINT IV.—As a substitute for the unconstitutional prohibitions in the Volstead Act there can be appropriate, comprehensive and effective regulations	23
CONCLUSION.—The statutes, in the respects complained of, exceed the powers delegated to Congress by the Eighteenth Amendment, have no real or substantial relation to appropriate enforcement, violate complainant's rights secured by the fundamental law, and are in such respects unconstitutional.	
The judgment appealed from should be reversed and the decree of the District Court affirmed	27
APPENDIX OF MEDICAL DATA	28

INDEX TO CASES.

	PAGE
Adams <i>v.</i> Tanner, 244 U. S., 590, 594	19
American Construction Company <i>v.</i> Jacksonville, Tampa and Key West Railway Co., 148 U. S., 372, 385	2
Bailey <i>v.</i> Drexel, 259 U. S., 20, at 37	22
Barbier <i>v.</i> Connelly, 113 U. S., 27, at 31	22
Barry <i>v.</i> Edmunds, 116 U. S., 550, 560	2
Bitterman <i>v.</i> Louisville & N. R. R., 207 U. S., 205, 225	2
Bowman <i>v.</i> State, 40 S. W., 796	9
Busch & Co. <i>v.</i> Webb, 122 Fed., 655 (appeal dismissed, 194 U. S., 640)	8
Child Labor Tax Case, 259 U. S., 20	18, 22
Children's Hospital <i>v.</i> Adkins, 284 Fed., 613 (af- firmed 261 U. S., 525)	19
Commonwealth <i>v.</i> Mandeville, 142 Mass., 469	8
Dent <i>v.</i> West Virginia, 129 U. S., 114, 122	12
Everard Breweries <i>v.</i> Day, 265 U. S., 545, 563	15, 19
Freund, Police Power, §223, p. 210	16
Freund, Police Power, §650	13
Gue <i>v.</i> City of Eugene, 100 Pac., 254 (Oregon)	8
Hamilton <i>v.</i> Kentucky Distilleries, 251 U. S., 146, at 156	22
Hammer <i>v.</i> Dagenhart, 247 U. S., 251	18, 22
Harrison Anti-Narcotic Act, Act of Dec. 17, 1914	23
Hawker <i>v.</i> New York, 170 U. S., 189, at 194	12
Hill <i>v.</i> Wallace, 259 U. S., 44, 67	18
Jacobson <i>v.</i> Massachusetts, 197 U. S., 11, 29	22
Judicial Code, §128	2
Judicial Code, §129	2
Judicial Code, §241	1
Keller <i>v.</i> United States, 213 U. S., 138	22
Lambert <i>v.</i> Yellowley, 291 Fed., 640	10, 11, 14, 19 21, 23, 26
License Tax Cases, 5 Wall., 462	22
Linder <i>v.</i> United States, 268 U. S., 5	17, 22
Lochner <i>v.</i> New York, 198 U. S., 45, at 56, 57, 64	16
McCulloch <i>v.</i> Maryland, 4 Wheat., 316, 423	22
McGill <i>v.</i> Mellon, 5 F. (2d), 262, 263	7

	PAGE
National Prohibition Act, Title II, §§6, 7, 8	5, 13, 26
National Prohibition Cases, 253 U. S., 350, 387	11
Nixon <i>v.</i> State, 76 Ind., 524	9
Public Health Law, Section 160	21
Report, Senate Judiciary Committee, dated June 11, 1917	11
Sarrls <i>v.</i> Commonwealth, 83 Ky., 327	9, 17
Selzman <i>v.</i> United States, 268 U. S., 466	7
Smith <i>v.</i> Vulcan Iron Works, 165 U. S., 518	2
State <i>v.</i> Costa, 62 Stl. (Vt.), 38	8
State <i>v.</i> Larrimore, 19 Mo., 391	9
State <i>v.</i> Roach, 75 Me., 123	8
Street <i>v.</i> Lincoln Safe Deposit Co., 254 U. S., 88, at 89	1
Thomasson <i>v.</i> The State, 15 Ind., 449	9
Tiedeman, Control of Persons & Property, Sec. 85, p. 239	13
United States of America <i>v.</i> Daugherty, 70 L. Ed., 169	18, 23
United States <i>v.</i> DeWitt, 9 Wall., 41	22
United States <i>v.</i> Doremus, 249 U. S., 86	15, 18
United States <i>v.</i> Freund, 290 Fed., 411, at 413 and 414	19
United States <i>v.</i> Harris, 177 U. S., 305	10
United States Fidelity & Guaranty Co. <i>v.</i> Bray, 225 U. S., 205, 214, 215	2
Wiley <i>v.</i> Sinkler, 179 U. S., 58	2
Willis-Campbell Act (An Act Supplemental to The National Prohibition Act, Act of November 23, 1921), Section II	6

INDEX TO APPENDIX OF MEDICAL DATA.

	PAGE
American Medicine, New Series, Vol. VIII, No. 9. . . .	31
Anders, A Text Book of the Practice of Medicine, 14th Ed.	35
Barker, Endocrinology and Metabolism	51
Curschmann, Der Unterleibs Typhus	45
Delafield, Lectures on the Practice of Medicine (1882- 3)	38
Ewald, Der Alkohol Bei Infektions Krankheiten, 1913	47
Flint, Treatise on the Principles and Practice of Medicine, p. 983	35
Forchheimer, The Prophylaxis and Treatment of In- ternal Diseases	47
Gruber, Der Einfluss des Alkohols, etc.	47
Hare, Text Book of Practical Therapeutics	37
Hutchinson, Index of Treatment by Various Writers	39
Journal of American Medical Ass., Jan. 21, 1922 . . .	28
Journal of American Medical Ass., June 8, 1918 . . .	52
Journal of American Medical Ass., Oct. 19, 1921 . . .	52
Journal of American Medical Ass., June 21, 1921 . .	53
Lyon, Traité Elementaire de Clinique Therapeutique	44
Martinet, Therapeutique Clinique, 1921, Tome II . . .	45
Matas, Surgery of the Vascular System, Keen's Sur- gery, Vol. V.	48
Minelle, L'Alcohol en Therapeutique Infantile	45
New Orleans Med. and Surg. Journal, 1904-5, Vol. LVII	49
Osborne, The Principles of Therapeutics	37
Penzoldt, Lehrbuch der Klinischen Arzneibehandlung, 1921	46
Richard, Précis de Therapeutique et de Pharmacol- ogie	44
Stevens, The Practice of Medicine	36
Tyson, The Practice of Medicine, 6th Ed.	36
Wilcox, Materia Medica and Therapeutics	37
Wood, Therapeutics, The Principles and Practice, 10th Ed.	50

Supreme Court of the United States

OCTOBER TERM, 1925.

SAMUEL W. LAMBERT,

Appellant,

against

EDWARD C. YELLOWLEY, as Acting Federal Prohibition Director; DAVID H. BLAIR, as Commissioner of Internal Revenue, and EMORY R. BUCKNER, as United States Attorney for the Southern District of New York.

No. 301.

APPELLANT'S BRIEF.

The suit involves the constitutionality of those portions of the Volstead Act and of the Willis-Campbell Act which, without qualification or exception, prohibit prescriptions of liquor as medicine beyond one pint ($\frac{1}{2}$ pint alcoholic content) in ten days.

The complainant, Samuel W. Lambert, appeals under Section 6 of the Act of March 3, 1891 (Section 241, Judicial Code), from a judgment of the Circuit Court of Appeals of the Second Circuit reversing a decree of the District Court and dismissing his bill (fols. 61, 62).

The questions arise on the Government's motion to dismiss the complaint (Rec., p. 11, fol. 21). Such motion admits the facts alleged in the complaint (*Street v. Lincoln Safe Deposit Co.*, 254 U. S., 88, at 89).

The District Court, per Knox, J., held that the Acts in the respects complained of were unreasonable and arbitrary and accordingly unconstitutional, denied defendants' motion to dismiss and granted an injunction (Rec., p. 18, fol. 35; Opinion, pp. 12-18; 291 Fed., 640). Defendants then appealed to the Circuit Court of Appeals under Section 7 of the Act of March 3, 1891 as amended (Section 129 of the Judicial Code) to review the interlocutory order of injunction.

The Circuit Court of Appeals, per Rogers, C. J., reversed the decree, dissolved the injunction and directed a dismissal of the Complaint (Rec., p. 33, fols. 61, 62; Opinion, pp. 21-32; 4 F. [2d] 915). That was a final decree, and as the jurisdiction of the Court had been invoked on the ground that the suit was one arising under the Constitution and an act of Congress, the appeal herein was rightly allowed (fols. 63-65). Nor does Section 128 of the Judicial Code vest the Circuit Courts of Appeals with final appellate jurisdiction over cases arising under the National Prohibition Act. (*United States Fidelity & Guaranty Co. v. Bray*, 225 U. S., 205, 214, 215; *Smith v. Vulcan Iron Works*, 165 U. S., 518; *American Construction Company v. Jacksonville, Tampa and Key West Railway Co.*, 148 U. S., 372, 385). That the suit involves more than the jurisdictional amount is alleged in the complaint (fol. 5) admitted by the procedure of dismissal and found by the Circuit Court of Appeals (fol. 47).

See also:

Wiley v. Sinkler, 179 U. S., 58;

Barry v. Edmunds, 116 U. S., 550, 560;

Bitterman v. Louisville & Nashville Railroad, 207 U. S., 205, 225.

Statement of Facts.

The complainant is a physician engaged continuously since 1888 in the practice of medicine in the City of New York (fols. 5, 6). As the opinion below states, it is conceded that he is a man of great distinction in his profession and of wide and unusual experience in the practice of medicine (fol. 43). By virtue of training and studies and compliance with State regulations, he acquired the right to practice medicine in the healing and cure of the sick and in the protection of human beings against attacks of disease (fol. 5).

It is an essential part of complainant's right as a physician and of his duty toward his patients to treat their diseases and to promote their physical well-being according to the untrammelled exercise of his best skill and scientifically trained judgment, and, to that end, to advise the use of such medicines and medical treatment as in his opinion are best calculated to effect their cure and establish their health (fol. 6).

It is the belief and judgment of Dr. Lambert, based on his experience and observation and the study of medical science, that the use as a medicine of spirituous liquors, to be taken internally, is, in certain cases, necessary for the proper treatment of patients in order to afford relief from known ailments (Par. 8, fols. 6, 7).

In prescribing drugs and medicines, the determination of the quantity to be used involves a consideration of the physical condition of the patient.

"It is the belief of complainant, based upon his experience and observation and the study of medical science, that in the use of spirituous liquors as medicine it is in certain cases, including cases now under complainant's observation and subject to his

professional advice, necessary in order to afford relief from some known ailment, that the patient should use internally more than one pint of such liquor in ten days, and that it is in certain cases necessary for proper medical treatment that the patient should use internally some spirituous liquor without delay, notwithstanding that within a preceding period of less than ten days the patient may have received and used more than one pint of such liquor. Complainant conceives it to be his duty, and intends, unless restrained by lawful authority, to issue prescriptions in such cases according to his best skill and judgment" (Complaint, Par. Ninth, fol. 7).

Dr. Lambert has never prescribed and does not intend to prescribe the use of liquor for beverage purposes. He does not intend to advise or prescribe the use of liquor as a medicine unless, after careful physical examination of the patient, he in good faith believes that the use of such liquor as medicine by the patient is necessary and will afford relief to him from some known ailment (Complaint, Par. Tenth, fol. 7).

The complaint then sets forth the provisions of the National Prohibition Act and of the supplemental Act prohibiting the prescription of spirituous liquor by a physician to a patient in amounts of more than one pint within a period of ten days or containing more than one-half pint of alcohol (Complaint, Pars. Eleventh, Twelfth, fols. 8, 9).

It is then alleged in Paragraph Thirteenth of the complaint that the portions of such Acts as prohibit physicians from advising or prescribing the use of more than one pint of spirituous liquor within ten days, are beyond the authority conferred upon Congress by the Eighteenth Amendment to the Constitution, and are void and of no effect.

The threats of the defendants to enforce these provisions of the Acts against Dr. Lambert and against physicians similarly situated are set forth in Paragraphs Fourteenth and Fifteenth.

A representative character has been given to the suit by the fact that the complainant sues not only on his own behalf but in the interest of a large number of physicians of distinction in their profession who find themselves prohibited from rendering to their patients the essential service dictated by their best skill and judgment (Complaint, Par. Fifteenth, fol. 10).

The resolution of these physicians, attached as Exhibit A to the complaint, shows that *the subject should be dealt with by regulation rather than by the prohibition set forth in the Acts.*

The particular part of the National Prohibition Act complained of herein (Section 7 of Title II), after recognizing that the prescription of alcoholic liquor as a medicine may, in the good faith of the physician, be necessary to afford relief from a known ailment, proceeds without qualification to prohibit more than one pint in any period of ten days. It is as follows:

"No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. Not more than a pint of spirituous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days."

See also the Willis-Campbell Act (an Act Supplemental to the National Prohibition Act, Act of November 23, 1921), Section II.

POINT I.

Beverage purpose the antithesis of medicinal use. The Eighteenth Amendment in prohibiting Beverage purpose does not prohibit, or delegate the power to prohibit, medicinal use.

(a) *Limitations inherent in the terms of the Amendment.*

The Eighteenth Amendment, which is the sole claimed source of Congressional power in this matter, is as follows:

"Section 1.—After one year from the ratification of this article the *manufacture, sale or transportation* of intoxicating liquors within, the *importation* thereof into, or the *exportation* thereof from the United States and all territory subject to the jurisdiction thereof for *beverage purposes* is hereby prohibited.

"Section 2.—The Congress and the several States shall have concurrent power to enforce this article by *appropriate legislation*."

(1) *Limitations as to relationship.*

The terms of the Amendment show a limitation to five distinct and well known relationships in liquor: its manufacture, its sale, its transportation, its importation, its exportation. And the only object in specifying relationship was to limit the prohibition.

Medicinal use of liquor at the time of the drafting and adoption of the Amendment was well known and common. The prescription of alcoholic liquor for medic-

inal purposes was a long recognized relationship. Such relationship is not prohibited and is not inferentially to be included within any of the five specified prohibited relationships.

(2) *Limitation as to purpose.*

The Amendment contains a further clearly defined limitation which modifies and controls each of the five definite classes of prohibited relationships. Neither manufacture, nor sale nor importation, nor exportation nor transportation of intoxicating liquors is prohibited unqualifiedly and for all purposes. They are prohibited for one specific class of purpose. They are prohibited only "*for beverage purposes.*"

Here also it would have been easy to express a general and sweeping prohibition. The mentioning of the specific purpose is solely as a limitation. Where the remainder of the subject matter is left in other jurisdictions, the granting of power to Congress under this phraseology is necessarily a limitation to the purpose expressed.

For example, industrial use is not prohibited. And it has been well held that there is "nothing in the Eighteenth Amendment grounding such power" to prohibit industrial use and *that the use of alcohol for non-beverage purposes is a right protected by due process of law* (*McGill v. Mellon*, 5 F. [2d], 262, 263). Powers of definition and regulation present quite another question (*Selzman v. United States*, 268 U. S., 466).

At the time of the drafting and ratification of the Amendment, the term "beverage purpose" in prohibition legislation had a generally accepted meaning. *Beverage purpose was the antithesis of medicinal use.*

In *Commonwealth v. Mandeville*, 142 Mass., 469, in construing a prohibition statute containing the same phraseology, the Court, per Holmes, J., at page 469, said:

"Sales of liquors to be used *as a beverage* were spoken of by way of *antithesis* to sales *for medicinal purposes*, and signified sales of liquors *to be drunk for the pleasure of drinking, as distinguished from sales of liquors to be drunk in obedience to a doctor's advice.*"

In *Gue v. City of Eugene*, 100 Pac., 254 (Oregon), the Court, in construing a prohibition statute, at page 256, said:

"*'The use of liquor as a beverage,'* say the editors of Words and Phrases (Volume 1, p. 769), 'does not mean simply that the same is to be drunk, but the word "beverage" is used *to distinguish the act of drinking liquor for the mere pleasure of drinking from its use for medicinal purposes.*'"

See also:

State v. Roach, 75 Me., 123;

State v. Costa, 62 Atl. (Vt.), 38.

The Amendment, thus by use of terms of well accepted statutory meaning shows an affirmative intention that prohibition of medicinal use be excluded from the power conferred upon Congress.

Furthermore, power to prohibit medicinal use, to be included in the powers delegated would, under well known rules of construction have to be specifically mentioned.

In *Busch & Co. v. Webb*, 122 Fed., 655 (appeal dismissed, 194 U. S., 640), the District Judge, in declaring that such portion of a State statute was unconstitutional which prohibited physicians not in active practice from

prescribing liquor as a medicine, quoted with approval from the opinion in *Bowman v. State*, 40 S. W., 796, as follows:

"It was further known at the time that alcohol in various forms was in common use among the people, in case of sickness, *for medical purposes*; alcohol in various forms entering into combination with many of the most useful medicines belonging to the profession. *These were not evils to be provided against, but privileges to be conserved*, and it is not inimical to a proper construction of the provisions of the Constitution in question to interpret it in the light of the surrounding circumstances under which it was adopted."

In *Thomasson v. The State*, 15 Ind., 449, in interpreting a statute of absolute prohibition, the Court held, to quote the headnote:

"Though the law of March 5, 1859, regulating the sale of spirituous liquors, contains no exception of sales made for medicinal or sacramental purposes, the Court will make the exception in proper cases."

In *State v. Larrimore*, 19 Mo., 391, the statute contained no exception in favor of the sale of liquor by a physician as medicine. Nevertheless it was held that the statute must be so construed as to include such an exception. The Court, in reversing the conviction, said:

"If a physician, upon his professional judgment that a sick person needs brandy, administers it as a medicine, in good faith, and charges for it, he is not to be punished; because such liquor, properly used, is a valuable medicine."

See also

Sarrls v. Commonwealth, 83 Ky., 327, at 331;

Nixon v. The State, 76 Ind., 524.

The conclusion of Judge Knox below, it is respectfully submitted, is sound (fol. 27; 291 Fed., at 642).

"The Eighteenth Amendment to the Constitution was designed to bring about the prohibition of intoxicating liquor 'for beverage purposes,' and was not, I think, intended to put an end to the use of liquor for purposes regarded by those who proposed the amendment, and by many of the States that ratified it, as justifiable and proper."

(3) *Limitation as to method of enforcement.*

The Amendment sets forth a third separate class of limitation. The enforcement of the powers delegated under Section 1 must, in accordance with Section 2, be by *appropriate* legislation.

This, we respectfully submit, incorporates in the amendment the doctrine laid down by this Court that Congress cannot, in the exercise of the powers thus carefully limited, under the guise of enforcement, extend its powers to matters inappropriate (see Point II herein).

It is respectfully submitted that the Circuit Court of Appeals below, in contradiction to the rule laid down by this Court in *United States v. Harris*, 177 U. S., 305, at 309, has departed from the settled meaning of the terms of the Eighteenth Amendment in order to bring the medicinal use of liquor within its prohibition.

It is impossible to attribute inadvertence or oversight to the framers of the Amendment in the use of these various limitations. The conclusion of the Court below, that a physician's right to prescribe alcohol in the treatment of disease is not inherent, and that it can be controlled and prohibited by Congress under this Amendment (fol. 60), is a violation, we respectfully submit, of these limitations inherent in the Amendment itself.

This Court, in *National Prohibition Cases*, 253 U. S. 350, at 387, has stated that "there are limits beyond which Congress cannot go in treating beverages as within its power of enforcement." All three classes of limitation, we respectfully submit, have herein been transgressed.

(b) *Preservation of medicinal use, a part of the Amendment as submitted and ratified.*

The States, when they ratified the Amendment, not only were justified in relying upon the fact that under the very phraseology of the Amendment, as such terms had been used in the construction of prohibition laws by the courts, medicinal use was reserved; but could rely upon the express assurance of that fact given by the Senate Judiciary Committee in reporting the measure.

Judge Knox below stated (fols. 29, 30; 291 Fed., 644):

"As bearing upon what was sought to be accomplished through the instrumentality of the Eighteenth Amendment, I quote from the Report of the Senate Judiciary Committee, dated June 11, 1917, in which the adoption of a concurrent resolution submitting amendment to the States was recommended. The Committee in setting forth some of the arguments advanced by proponents of the measure reported the following:

"National law, enacted under an amended Constitution, could prohibit transportation and sale, and in concurrence with like legislation by the States (the union of the power of the nation and the power of the states), thus securing the entire strength of the whole community, could soon put an end to the traffic. Under such restriction in a generation or two the consumption of alcohol as a beverage would practically disappear. Alcohol would still be manufactured,

distributed and sold under the restrictions appertaining to other poisons; and *its use as a medicine and in the arts would not be interfered with*. Its manufacture and distribution would be controlled by like regulations as those made with reference to dynamite, nitroglycerine and gunpowder, and the whole family of poisons, and in fact, all articles of great and dangerous potency which, nevertheless, *have their legitimate uses for the benefit of mankind.*'

"I have little or no doubt that it was the impelling force and *reasonableness* of the thought expressed by the foregoing quotation that brought about the submission of the amendment to the several States, and *was responsible for its ratification by forty-five of them.*"

POINT II.

Prohibition of medicinal use inappropriate to reasonable enforcement of prohibition of beverage purpose.

The physician, as this Court has recognized, is one whose relationships to life and health are of the most intimate character. He must possess the knowledge of diseases and their remedies, and also be safely entrusted to apply those remedies. It is thus the province of the States to require safeguards upon his character, his training, his knowledge,—all for the purpose of securing to the patient an honest exercise of trained and intelligent judgment in the application of remedy to disease.

Hawker v. New York, 170 U. S., 189, at 194;

Dent v. West Virginia, 129 U. S., 114, 122.

See also:

Tiedeman, Control of Persons & Property, Sec. 85, p. 239;

Freund, Police Power, Sec. 650.

The National Prohibition Act itself recognizes that the physician of trained judgment may properly determine that the prescription of alcoholic liquor is necessary to the treatment of a patient suffering from some known ailment. The Act itself recognizes that medicinal use is not a beverage purpose.

In Section 6 of Title II, it is provided that no one shall be given a permit "to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession." It is also provided that no permit shall be issued until a verified application shall have been made setting forth the qualification of the applicant and the purpose for which the liquor is to be used. Section 7 recognizes the use of liquor as a medicine and provides that no physician shall prescribe liquor unless, after careful physical examination of the person for whose use the prescription is sought, he in good faith believes that *the use of such liquor as a medicine by such person is necessary* and will afford relief to him from some known ailment. Section 8 recognizes that there may be cases of emergency in the prescription of alcoholic liquor. The emergency, however, is merely allowed to affect the formality of a prescription and does not in any way qualify the rigid prohibition of more than one pint in ten days.

This recognition on the part of Congress, that in the honest trained judgment of a physician the prescription of alcoholic liquor according to fair medical standards,

may be necessary to the cure of a patient, emphasizes the unreasonableness and arbitrary character of the rigid prohibition of more than one pint in ten days, regardless of the judgment of the physician and regardless of the need of the patient.

As Judge Knox well said below (fol. 26; 291 Fed., at 642):

"For the purposes of this motion, it is sufficient to accept the allegations of the complaint, and to consider that Congress itself, in the very legislation under attack, has recognized that in certain cases liquor has a legitimate medicinal use, and has specified the circumstances under which it may be prescribed in given instances. The difficulty is that having done so, *Congress, without reference to the quantity of liquor actually required for the proper treatment of a particular ailment from which a patient may be suffering and irrespective of the good faith, judgment and skill of the physician in attendance, proceeds to limit the amount to be prescribed to not more than a pint within a period of ten days.*"

The Act supplemental to National Prohibition is, in this respect, of the same arbitrary character. It recognizes the distinction between medicinal purposes and beverage purposes but the physician is prohibited from prescribing "more than one-half pint of alcohol, for use of any person within any period of ten days."

As Judge Knox pointed out below (fol. 29, 291 Fed., 641), this legislation, of which Dr. Lambert complains, is not based upon any finding as to the quantity of liquor that reasonably and properly may be required within a specified period for the treatment of disease.

As indicating some of the necessities arising in the prac-

tice of medicine, we submit in an appendix medical authorities and a chart of the required dosage in treatment of different diseases. One-half pint of alcoholic content in ten days eliminates any adequate prescription of liquor as a remedy in diseases running a course requiring it.

Congress, after having recognized that some amount may be necessary, without looking into the question as to what amount will be required in the treatment of various diseases, rigidly fixes upon a useless, unreasonable and an arbitrary maximum amount and prohibits all else.

In the event that the patient in the preceding nine days has had on a doctor's prescription one pint of alcoholic liquor, he cannot, on the tenth day, no matter what his need or his physician's trained opinion as to his necessities, have one drop more. His illness may take a sudden turn for the worse. An entirely new ailment may intervene, making prescription essential to prevent death. The Act contains no exceptions or qualifications. The prohibition is absolute.

The question as to reasonableness has been peculiarly centered upon these particular spirituous liquor provisions of the Volstead Act and of the supplemental Willis-Campbell Act. For this Court in *Everard Breweries v. Day*, 265 U. S., 545 (following *United States v. Doremus*, 249 U. S., 86), sustained the prohibition of malt liquor for medicinal purposes on the ground that Congress had taken testimony upon the subject of malt liquors and had determined in effect that they possessed no substantial or essential medicinal properties which made it necessary that their use for medicinal purposes should be permitted; and that as a matter affecting public health, "it was sufficient to permit physicians to prescribe spirituous and vinous intoxicating liquors."

When this Court is now, however, called upon to determine this particular question, which, as the Circuit Court of Appeals below has stated, is new (fol. 51), the outstanding feature of the legislation is that it proceeds upon no investigation in regard to the facts, that it recognizes the necessity but prohibits the remedy, and that it has no relationship, in appropriateness, to the enforcement features of the powers delegated.

As a practical matter, the only constitutional guarantee of the citizen in such a situation is that this Court will insist upon the doctrine of appropriateness which has here been incorporated into the fundamental law by the very terms of the amendment. Unless this is insisted upon, under guise of enforcement features, distinctions between powers of Congress and powers of the States are lost, and matters never intended to be delegated by States to Congress are, nevertheless in violation of the terms of the grant, appropriated. (*Lochner v. New York*, 198 U. S., 45, at 56, 57, 64.)

Nothing could be more arbitrary than for a statute, ostensibly designed to promote public health, to recognize the medicinal use of alcoholic liquor and at the same time blindly and flagrantly to prohibit such use, in necessary quantities. Nothing could be more unreasonable and arbitrary than to recognize that the subject is within the judgment of the physician, but at the same time to prohibit the exercise of that judgment. In a word, the legislation proceeds upon the theory that health may depend upon a prohibition of cure. Possibilities of abuse in this subject are remote from the actual necessities of use.

Freund, Police Power, page 210, §223:

"All prohibitory laws make an exception in favor of sales for medical purposes. This is not a legis-

lative indulgence but a constitutional necessity, since the state could not validly prohibit the use of valuable curative agencies on account of a remote possibility of abuse. 'The power of the legislature to prohibit the prescription and sale of liquor to be used as a medicine does not exist, and its exercise would be as purely arbitrary as the prohibition of its sale for religious purposes.' (Quoted from *Sarrls v. Commonwealth*, 83 Ky. 327.)

It is respectfully submitted that this Court has on closely analogous facts arrived at the conclusion of unreasonableness of such legislative provisions, and that the resultant control of medical practice in the States is inappropriate and unnecessary to reasonable enforcement.

In *Linder v. U. S.*, 268 U. S., 5, the Court, at page 18 said:

"Obviously, direct control of medical practice in the states is beyond the power of the Federal government. Incidental regulation of such practice by Congress through a taxing act cannot extend to matters plainly inappropriate and unnecessary to reasonable enforcement of a revenue measure. The enactment under consideration levies a tax, upheld by this court, upon every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves or derivatives therefrom, and may regulate medical practice in the states only so far as reasonably appropriate for or merely incidental to its enforcement. It says nothing of 'addicts' and does not undertake to prescribe methods for their medical treatment. They are diseased and proper subjects for such treatment, and we cannot possibly conclude that a physician acted improperly or unwisely or for other than medical purposes solely because

he has dispensed to one of them, in the ordinary course and in good faith, four small tablets of morphine or cocaine for relief of conditions incident to addiction. What constitutes bona fide medical practice must be determined upon consideration of evidence and attending circumstances. Mere pretense of such practice, of course, cannot legalize forbidden sales, or otherwise nullify valid provisions of the statute, or defeat such regulations as may be fairly appropriate to its enforcement within the proper limitations of a revenue measure."

We regard this case as holding (1) that medical practice is beyond control of the Federal government; (2) that it may not be prohibited in any respect; (3) that its regulation must proceed upon evidence and be appropriate to enforcement. In fact this Court therein at page 22 specifically stated that any act which would prohibit a physician prescribing "*bona fide* and according to *fair medical standards*" would be drastic and would encounter grave constitutional difficulties.

In *United States of America v. Daugherty* (70 Lawyer's Edition, 169), decided by this Court on the 4th of January, 1926, and not yet officially reported, this Court, in regard to the same statute said:

"The constitutionality of the Anti-Narcotic Act, touching which this Court so sharply divided in *United States v. Doremus*, 249 U. S. 86, was not raised below and has not been again considered. The doctrine approved in *Hammer v. Dagenhart*, 247 U. S. 251; *Child Labor Tax Case*, 259 U. S. 20; *Hill v. Wallace*, 259 U. S. 44, 67; and *Linder v. United States*, 268 U. S. 5, may necessitate a review of that question if hereafter properly presented."

The solicitude that abuse may grow up in connection with

the prescription of liquor as a medicine may justify regulations. Such regulations Dr. Lambert and the Society for the Protection of Constitutional Rights and the American Medical Association welcome and are solicitous to promote. It does not justify prohibition. The administration of the remedy is for the health of the patient. Because in certain cases the remedy may be inappropriate is no justification for a prohibition of its appropriateness. Fundamental guarantees of the Constitution cannot be freely submerged whenever ostensible justification is advanced.

Adams v. Tanner, 244 U. S., 590, 594;

Children's Hospital v. Adkins, 284 Fed., 613 (affirmed 261 U. S., 525).

This Court in *Everard Breweries v. Day*, 265 U. S., 545, at 563, held that the question of reasonable necessity was in reality a question of fact. In the case at bar, Congress, as has been said, has never investigated into that question of fact, but has arbitrarily indulged in a prohibition on a subject beyond its delegated power.

The unreasonableness is so glaring that it has been twice found and determined by Trial Courts.

In *U. S. v. Freund*, 290 Fed., 411, at 413 and 414, Judge Bourquin held that the provisions of the statutes in regard to the amount of alcohol to be prescribed by the physician were arbitrary, unreasonable and thus invalid. He concluded that it was an extravagant and unreasonable attempt to subordinate the judgment of the trained physician to that of Congress in respect to matters with which the former alone is competent to deal, that it infringes upon the duty of the physician to prescribe in accordance with his honest judgment, and upon the right of

the patient to receive the benefit of the judgment of the physician of his choice.

In the case at bar, Judge Knox held (fol. 28; 291 Fed., 643), that on the admitted allegations of the complaint, that more than a pint of liquor within ten days is necessary for the treatment of certain known ailments, the statute admits that the use of liquor may be necessary; but at the same time prohibits its use; and concluded:

"If this be true, it would seem not to be a function of the Congress—particularly, under the amendment, to invade, as it were, the domain of medical authority, and to deprive patients of that which they need, and, by every principle of right and justice, are entitled to have. Having assumed so to do, it would appear that the action does not constitute legislation appropriate to the object sought to be attained through the adoption of the amendment. To me it seems reasonably clear that the right of the public to have available for its use when required in the proper treatment of disease, an adequate supply of a valuable therapeutic agent, transcends the present power of Congress to decree otherwise upon the basis of expediency or policy."

As an enforcement measure, what can be said in justification of these statutory provisions which prohibit liquor as a medicine to a person recognized as needing it for his health, on the hazard that it may reach a person who does not need it for his health? This substitutes a certain injury for a hazard of diversion. And what can be said in justification of these provisions of the statute as a health measure, when they prohibit persons trained in the administration of remedies from administering necessary remedies to the sick?

These clauses, which rigidly and flagrantly ignore not

only the ordinary requirements in the treatment of known ailments but emergencies and exceptional cases involving the issues of life and death are obviously arbitrary and unreasonable in that adequate regulation, as distinguished from prohibition, is appropriate to the subject. As Judge Knox held below (fol. 29), 291 Fed. at 643:

"The danger that persons bent upon a violation of the Volstead Law may through the medicinal use of liquor, be furnished with a means of procuring intoxicants for beverage purposes, is to be overcome through regulations. These may be of the most stringent character, but they must, in my opinion, fall short of an actual prohibition."

The Appendix, attached to the complaint, constituting resolutions of the body of physicians on whose behalf the action was brought, suggest definite and appropriate regulations upon this subject.

POINT III.

Control of medical practice in the States is beyond the power of the Federal Government.

Dr. Lambert is licensed, under the Laws of the State of New York, to practice medicine. Under Section 160 of the Public Health Law of that State, he holds himself out as not only able to diagnose, but to prescribe.

Clauses in these Federal statutes prohibit his prescription of more than one pint of liquor in ten days, although, in his trained judgment, such prescription is necessary to the cure of patients now under his observation and treatment. The Act of Congress, therefore, controls his practice of medicine in this its essential feature.

The Circuit Court of Appeals has concluded herein that Congress can in this respect control the practice of medicine but this Court has held that such control of medical practice in the States is beyond the power of the Federal Government.

In *Linder v. United States*, 268 U. S., 5, this Court said (p. 17) :

“Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power but solely to the achievement of something specially within power reserved to the States, is invalid and cannot be enforced. *McCulloch v. Maryland*, 4 Wheat., 316, 423; *License Tax Cases*, 5 Wall., 462; *United States v. DeWitt*, 9 Wall., 41; *Keller v. United States*, 213 U. S., 138; *Hammer v. Dagenhart*, 247 U. S., 251; *Child Labor Tax Case*, 259 U. S., 20.”

Inasmuch as the United States lacks the police power (*Hamilton v. Kentucky Distilleries*, 251 U. S., 146, at 156) the limitations enumerated in the terms of the Eighteenth Amendment preclude any argument that there was an intention that the police power of the States, in regard to the regulation of medicine, be interfered with.

Barbier v. Connelly, 113 U. S., 27, at 31;

Hammer v. Dagenhart, 247 U. S., 251;

Bailey v. Drexel, 259 U. S., 20, at 37.

This Court in *Jacobson v. Massachusetts*, 197 U. S., 11, at 29, has said, that there is a sphere within which the

individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will.

Recognizing fully that the life of the citizen is subject to the necessity of the government in time of war, the question still remains whether the life of the citizen in times of peace is subject to policies of expediency. When the citizen is ill and his very life depends upon liquor prescribed by a physician is the life of the citizen to be sacrificed on the hazard that the liquor may be diverted? Should not adequate regulations deal with the hazard of diversion and at the same time, leave open the possibility of saving the life?

POINT IV.

As a substitute for the unconstitutional prohibitions in the Volstead Act there can be appropriate, comprehensive and effective regulations.

The provisions under the so-called Harrison Anti-Narcotic Act which make it a crime to give drugs to addicts, this Court has recently intimated, show the same unconstitutional method on the part of Congress in dealing with the practice of medicine. (*United States v. Daugherty, supra.*) Congress cannot, under either its taxing power or under its enforcement of a limited delegated power, prohibit, rather than merely regulate, these two far reaching classes of remedy.

And we repeat what was so forcefully said by Judge Knox (291 Fed., 643):

"The danger that persons bent upon a violation of the Volstead Law may through the medicinal use

of liquor, be furnished with a means of procuring intoxicants for beverage purposes, is to be overcome through regulations. These may be of the most stringent character, but they must, in my opinion, fall short of an actual prohibition."

And in so far as such regulations have this purpose in view, Dr. Lambert and all like physicians would be required to conform to them. As will appear from the Appendix, the American Medical Association—the representative of all the leading physicians and surgeons of the United States—is in accord with this view. Required is scarcely the appropriate word, so much would they welcome such restrictions.

There are many effective forms which such regulations might take.

The Association for the Protection of Constitutional Rights has suggested another regulation:

"Further Resolved, that the members of this Association, however, favor and will advocate the enactment of such Regulations as will require physicians prescribing alcoholic liquor in such amounts as they deem proper, to file any and all prescriptions with properly designated Governmental authorities, in order that any abuse by unworthy practitioners of the right to administer alcoholic liquor may be prevented and the offenders adequately and summarily punished."

In association with this required filing of the prescription, the Government might well establish the Dispensing Depot, wherein could be obtained—what notoriously is often not now obtainable—proper medicinal liquor for internal and external use.

Then, further, any danger of evil can be reached effectively in other ways. Every physician whose impounded

prescriptions for alcoholic liquors should justify suspicion and investigation might properly be compelled to file an affidavit with the governmental authorities to the effect that he has prescribed liquor only for medicinal purposes. And at regular intervals he can be required to file an affidavit stating that, during the period between the filing of such affidavit and that of the preceding one, he has not prescribed any liquor for other than medicinal purposes. The affidavit, if false, could subject the offender, not to a fine of \$500, but to the punishment for perjury—to the loss of his liberty and of his citizenship.

There are many other restrictions which Dr. Lambert and his associates believe can be resorted to for the elimination of the hazard of improper practise. There are in their opinion no pains and penalties too rigorous or unrelenting for the violators of the spirit and letter of the Amendment.

All such provisions, however, must, as has been pointed out, be directed against the use of alcoholic liquors for beverage purposes and not for medicinal purposes. They must in no wise trespass upon the right of the physician to heal and even save the sick according to his untrammelled judgment.

As has been stated, the provisions of the Volstead Act under Sections 6 and 10 in reference to wines for sacramental uses furnish illustration of the sole constitutional method of legislation by Congress as to liquors for medicinal purposes.

These, it will be seen, are in no wise prohibitions but merely regulations—designed to detect and apprehend and punish the violator who criminally diverts such wines to beverage purposes.

In this direction Congress and the Executive Depart-

ment may go to any reasonable length, dictated by wise judgment, as to liquors for medicinal purposes. They may proceed in no other direction and deal with prohibition instead of regulations. *They have conformed to the constitutional method in the case of intoxicating liquors for sacramental purposes and wholly departed from it in the case of such liquors for medicinal purposes.* For it will be noted that the Volstead Act, while containing the prohibition as to medicinal liquors, provides further that it "shall not be held to apply" to the manufacture, sale, transportation, importation, possession or distribution of wine for sacramental purposes (Sec. 6). Concerning this, Judge Knox made the following pertinent and illuminating comment (291 Fed., 612-3) :

"The eighteenth amendment to the Constitution was designed to bring about the prohibition of intoxicating liquor 'for beverage purposes' and was not, I think, intended to put an end to the use of liquor for purposes regarded by those who proposed the amendment, and by many of the States that ratified it, as justifiable and proper. This view was, in part at least, entertained by Congress in enacting the Volstead Law which permits the sale and use of sacramental wines; the use, in *bona fide* hospitals or sanitariums of such quantity of liquor, as may properly be administered under the direction of a duly qualified physician employed therein, to a person suffering from alcoholism; and the use of industrial alcohol under certain restrictions in arts and sciences. So far as the sacramental use of wine is concerned, there is no specific limitation of the quantity that may be purchased and consumed. Instead of manifesting the same solicitude for the physical well-being of a person suffering from a disease (other than alcoholism), the proper

treatment of which demands more than a pint of liquor within ten days, that it evinced for the spiritual comfort and welfare of members of certain religious sects, Congress restricted in the manner complained of, the medicinal use of intoxicating liquor."

CONCLUSION.

The statutes, in the respects complained of, exceed the powers delegated to Congress by the Eighteenth Amendment, have no real or substantial relation to appropriate enforcement, violate complainant's rights secured by the fundamental law, and are in such respects unconstitutional.

The judgment appealed from should be reversed and the decree of the District Court affirmed.

Respectfully submitted,

JOSEPH S. AUERBACH,

MARTIN A. SCHENCK,

EMILY C. HOLT,

Of Counsel.

APPENDIX OF MEDICAL DATA.

The Explanation and Results of the Referendum of Physicians on Behalf of the American Medical Association as to the Necessity of Alcohol for Treatment of Diseases.

"The Referendum on Alcohol.

"(Reprinted from the Journal of the American Medical Association, Jan. 21, 1922.)

"In hearings before Congress, in the discussion of regulations issued by the Internal Revenue Department, in fact, in practically every discussion of prohibition, contradictory statements have been made as to the views of physicians on the value of alcoholic beverages as therapeutic agents. Several scientific organizations have adopted resolutions on the subject. So far as we know, however, no attempt has heretofore been made to ascertain, in a direct way, the opinions of any considerable number of physicians.

"In order to secure the views of a representative portion of the medical profession a questionnaire was sent to more than one third—53,900—of the physicians of the United States.

"The excellent response, reaching 58 per cent. of replies and representing 21.5 per cent. of the physicians of the country, a percentage of return seldom attained by the questionnaire method, has been gratifying as an indication of the interest taken by our profession in this attempt to secure an adequate expression of its views.

"Some have taken exception to the word 'necessary,' claiming that no drugs are absolutely necessary, and that 'desirable' or 'advisable' would have been a better word for the purpose. This point was given careful consideration in formulating the question. Moreover, the word

'necessary' is used in the National Prohibition Act itself (Section 7, Title II) :

* * * And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is *necessary* [italics ours] and will afford relief to him for some known ailment.

"The word 'advisable' or 'desirable' would have been as much too mild as 'necessary' is, perhaps, too strong; 'necessary' does not mean indispensable, and it was properly regarded by practically all who answered the questionnaire.

"The criticism has been made that the question as to whether whisky is a necessary therapeutic agent is a scientific one and cannot be decided by resolutions or by votes. This is true; and the referendum was to secure the *opinions* of physicians on the subject, not to decide a scientific question. It is granted that the physiologic effects of alcohol are matters which may be determined in the laboratory; but therapeutics is the application of such findings to the treatment of disease as determined by the opinions of physicians. This and the experience of physicians—for the opinions necessarily are based on experience and observation—may be determined, as has been done, by the questionnaire.

"Approximately one-third of those replying commented on the general prohibition situation, on the restrictions and regulations, or on some allied topics. The more interesting of these comments have been published in connection with reports on the individual states. Many of

the views brought out in the comments are of value to those who are interested in the subject from the sociological or from any other point of view. For instance: Since National Prohibition went into effect, judging by these comments there has apparently been a reaction against prohibition in many states in which prohibition by state law had become accepted and effective. This is especially noticeable in the comments from Colorado, Kansas, Nebraska, South Dakota, and even from Maine. From the comments one must come to the conclusion that home-made, illegally distilled or chemically compounded liquors—so-called 'moonshine'—are being extensively used in states in which this was not the case three or four years ago. What has produced this apparent change?

"The questionnaire has brought out definitely the fact that the present regulations governing the medicinal use of alcoholic beverages are not satisfactory—in fact, many physicians declared them 'intolerable.' Many who were convinced that these drugs were not necessary therapeutically were emphatic in stating that other physicians who believed them necessary were entitled to have their views respected, and were warranted in efforts to have the drugs made available without incurring the odium attaching under the present regulation.

"Evidently most physicians are satisfied with the control of narcotics as regulated under the Harrison Narcotic (sic) Law, and many expressed a desire that the control of alcoholic liquors follow such lines. A decidedly large number of physicians suggest that the Government take over the whiskey, including its storage and sale, and supply it in sealed packages—say of 8, 16 and 32 ounces—for

medicinal use only, and at a fixed price, under regulations similar to those of the Harrison Narcotic (sic) Law, thus making available to physicians a drug of dependable quality."

The Questionnaire.

"Q. Do you regard whiskey as a necessary therapeutic agent in the practice of medicine? A. The total vote in all states on whether or not whiskey was *necessary* in the treatment of disease was 30,843; 15,625, or 51 per cent., answered yes, and 15,218, or 49 per cent., answered no."

Authorities Recommending the Use of Alcohol as a Curative Agent.

The late Dr. Abraham Jacobi was widely known and widely revered in his profession and among laymen. In an article on Alcohol Medication, published in *American Medicine*, New Series, Volume VIII, No. 9, pp. 575-577, written as recently as September, 1913, Dr. Jacobi says:

"An editorial in the July number of *AMERICAN MEDICINE* (p. 459) refers to the latest views on alcohol as expounded by Ewald. It states that 'all theories to the effect that it is to be classed as a stimulant are about exploded.' It is also asserted that 'those who are always waiting for some medical oracle to speak can now come over without fear to the modern consideration of alcohol as a sedative or anesthetic. The writer begs leave to say that the 'explosion' has not reached his ears. But then, he is quite willing to admit he is not an oracle, surely less so than Ewald who never claimed to be one. If he ever had done so, he would have forfeited his rights when, as the editorial says, he maintained that alcohol would no longer be used in illness. That time must never come, and as far as

I can see, should not come, *for there are conditions which absolutely demand the use of alcohol as a prominent part of medication.*

.

"I do not care to class alcohol anywhere. It has been called, or eulogized as a stimulant, a sedative, an anesthetic, an inhibitory and depressant power, aye as a paralyzer. I do not contest observations and experiments either on healthy or diseased men, and on animals. Indeed, I have great respect for experiments and observations in and out of our laboratories, and at your northern exposure windows. One of the most profitable laboratories, however, is the hospital and the private bedside. They have the advantage over an experiment on a dog or a rabbit, for while the experimenter on the latter is not infrequently devoid of clinical observation, when he publishes his result, the clinician seldom, if ever, appeals to the attention of his peers before he has confirmed his observations by scores or hundreds of cases. Great clinicians are more circumspect than loud. Hippocrates, the great, says more frequently than any of his successors, 'it seems to me.'

"Having been in uninterrupted contact with diphtheria since 1858 when it began its renewed murderous attack on our part of the world, I have anxiously looked for means to mitigate or heal what too often manifests itself as absolutely fatal. The virulent epidemic of forty years ago has furnished the formidable examples of sepsis and gangrene which in part were mitigated by my introduction of nasal irrigations, and sometimes restored to final health by local doses of alcoholic beverages. I shall return to that.

.

"When in 1860 I began to tracheotomize in diphtheritic laryngitis, I had three recoveries among my

first fives cases. They were published. Then—lo and behold, in the early seventies I had more than one hundred operations without a single recovery. So I learned wisdom and caution. That is why *after sixty years of practice when I trust in alcohol as a powerful remedy in cases of diphtheritic and other sepsis, I may be credited with ample experience both in successes and failures extending over half a century.* What I offer is no theory, and no laboratory experiments on the well or sick guinea pigs. My laboratory has been different. My life has been spent amongst the sick only, and the recovering and dying.

“A few stray specimens of my observation are as follows: With one of my most respected colleagues I saw thirty-five years ago a boy of five years. Membranes covered his fauces and mouth and part of the lips, and were visible in the nares. Round the neck were big lymph-body swellings, now known to all of us as the sure proof of thorough mixed infection. Some membranes could be removed by forcible injections into the nose. It had been bleeding and oozing; the odor was foul. The second heart sound still slightly perceptible, pulse 160, hardly felt at the wrist. Boy restless in his semi-coma, tossing about, feet bluish, not cold, covered with erosins and subcutaneous hemorrhages of different sizes. His whole surface discolored, from drab to blue; hemorrhages small and large in and under the skin. No intestinal hemorrhage. Urine could not be obtained. My friend told me I was not called by him but by the family of the dying boy; he was going downtown and on his way would order the undertaker to send the coffin after dark. I begged him not to do that, but to wait until to-morrow. The undertaker, however, came after dark and left disgusted. Meanwhile I had permission to act. The boy's stomach retained

my whiskey, from one to two teaspoonfuls every 15 or 25 minutes, diluted in water, occasionally in milk or coffee, and his rectum retained a few doses. Within a day he took a pint and a half, perhaps more. We kept on, the boy and I. He was alive when I happened to meet him twenty years afterwards.

"A girl of seven years I found in about the same condition thirty years ago. She was a patient of one of our great physicians who, when he died suddenly a year ago, proved to the world that there are some men who are indispensable. He said, 'Now, here, I have given your whiskey but she will die.' How much is she taking? 'Besides her other drugs she is taking as much as half a pint each of these two days, and retains it.' Very well, just continue, and I will give her my additional half pint. So we did, she took a pint or more daily. And got well.

"A boy of three years with the formidable symptoms of mixed infection was 'given up.' I held out the hope of recovery provided the doctor would succeed in getting into him with other appropriate medication, at least a pint of whiskey daily. He did succeed. Five days afterwards the father called in despair, saying his child was alive but insane. So he was, the boy was better; in fact, on the way to recovery, but drunk. To me that was a welcome occurrence, for I knew, and want my reader to know, that *no amount of whiskey will lead to intoxication when its effect is wanted to combat sepsis*. I repeat: No amount of alcohol will intoxicate a thoroughly septic person. As soon as my little patient did no longer require his big dose of alcohol, it made him 'insane,' intoxicated."

Austin Flint, M. D., L. L. D., says in the *Treatise on the Principles and Practice of Medicine*, page 983, with regard to the treatment of typhoid and typhus fevers:

"Alcoholics have entered largely into the treatment of fevers in this country during the last thirty years. That they have been used too freely and indiscriminately can hardly be doubted. As a natural consequence, there is perhaps at the present moment a tendency to undervalue their importance.

* * * Observation of their immediate offices in certain cases shows their utility—often in a very striking manner. * * * Used with proper application and moderation, they form an essential part of the supporting treatment of fevers as well as of all other diseases which destroy the life by asthenia."

James M. Anders says, in *A Text Book of the Practice of Medicine* (14th Ed., with assistance of John H. Musser, Jr.), page 50:

"Alcohol is less commonly employed at present than formerly, it is of some value in combating unfavorable nervous symptoms due to the typhoid septicaemia. The quantity to be administered must be regulated by its effects, since it may act injuriously and even aggregate the symptoms though this is seldom the case. * * * Threatened collapse may be met by full doses of alcohol ($\frac{1}{2}$ oz. every hour). * * * Effective doses of diffusible stimulants, as champagne, are useful during periods of sudden circulatory depression."

Page 117.—Is against using alcohol in lobar pneumonia.

Page 138.—Recommends use of alcohol in influenza.

Page 167.—Recommends alcohol in septicaemia and pyaemia.

Page 209.—Recommends alcohol in scarlet fever.

James Tyson says, in *The Practice of Medicine* (6th Ed., with M. Howard Fussel), page 28:

“Alcohol is not a heart stimulant as formerly supposed. That a certain amount may be utilized as food is certain. That alcoholics afflicted with typhoid fever need some form of alcohol seems certain, therefore alcohol is used in good doses 30 to 60 cc. every two or three hours in alcoholics in the early stages, but is gradually reduced in amount.
• • •

“When the heart muscle begins to flag, the pulse becomes rapid, and the patient extremely weak, doses of 15 to 30 cc. ($\frac{1}{2}$ -1 oz.) may be given every two or three hours with good effect. • • • A low muttering delirium, feeble dicrotic pulse, and dry tongue are among the indications which imperatively demand small amounts of alcohol.”

Page 40.—Typhus fever. Alcohol should be given as in typhoid.

Page 267.—Recommends alcohol in lobar pneumonia, in form of whiskey or brandy.

A. A. Stevens, M. A., M. D., Professor of Applied Therapeutics in the University of Pennsylvania, says in *The Practice of Medicine*, page 125, with regard to the treatment of diphtheria:

“Notwithstanding the fact that much has been written against the use of alcohol many clinicians of long experience believe that this drug is decidedly useful when asthenia is pronounced. For a child of three or four years a dram may be given every three or four hours.”

Hobart Amory Hare says, in a *Text Book of Practical Therapeutics*, page 78:

"Notwithstanding the almost universal use of alcohol as a stimulant by the laity and the medical profession, it cannot be denied that evidence of scientific character and weight is constantly being brought forward which shows that its dominant action is depressant upon all parts of the body. . . . Nevertheless *clinical experience, too great to be ignored, stands for the continued employment of the drug.* The drug does not act as a stimulant in the ordinary sense of the term, but nevertheless readjusts the circulation by dilating the peripheral vessels and influences the protective powers of the body by affecting the blood cells or the blood stream or the lymph."

Oliver T. Osborne, in *The Principles of Therapeutics*, page 212, says:

"The internal therapeutic use of alcohol should be entirely separated from a consideration of alcohol as a beverage or from the prohibition standpoint. Alcohol is a drug, and as such has many valuable uses. . . . There are times, for individuals who are weak, and in old age, when a little bitter tonic which contains alcohol, taken before meals, is perfectly legitimate treatment. In the age when alcohol could be obtained, it was a perfectly harmless proposition, in old age, with sleeplessness, to order a small amount of alcohol in the form best suited to the individual, to be taken before bed time. It is in such cases much less likely to do harm than is a stronger hypnotic drug."

Reynold Webb Wilcox says, in *Materia Medica and Therapeutics*, page 742:

*"Alcohol is of immense advantage in many instances of febrile disease. * * * It is by no means adapted for all varieties of fever, and hence its effects should always be carefully watched. * * * While it is often given when quite unnecessary, there are many instances in which it is of inestimable value in such affections as typhoid and typhus fevers, pneumonia, smallpox, cholera, and diphtheria and also in gangrene, phæmia, septicaemia, etc."*

Dr. Delafield in his *Lectures on the Practice of Medicine*, delivered in 1882-3.

Treatment of Pneumonia:

Pulse full and frequent (120) is normal to pneumonia. If feeble and over 120, stimulate with alcohol, form according to patient, amount according to action on pulse. Alcohol has no other use in pneumonia, an ounce of brandy or whiskey every one-half hour is not too much if needed.

Treatment of Diphtheria:

In the general treatment of the disease there should be administered such drugs as will act upon the disease itself. Alcohol is the favorite with many, and may be in the form of wine or liquor. When the alcoholic treatment of diphtheria is spoken of, it is understood that alcohol is given not merely for the purpose of sustaining the patient, but, in addition, for its constitutional effect. With this end in view it is given in large and repeated doses and given early, and usually in a concentrated form, as brandy or whiskey. For an adult, a half ounce or an ounce of one of these is given every hour or half hour; to a child, a drachm or half a drachm of brandy or whiskey is given

every hour or every two hours. It is given in large quantities in this way with the idea of getting the physiological effect of alcohol upon the body, and this you observe is a very different thing from giving stimulants when the patient's strength begins to diminish. This plan of treatment is one which is a favorite with many practitioners, and it has seemed to be successful in some places. Besides using alcohol in this way, it may be used simply as a cardiac stimulant after the disease has lasted for some time and after the heart's action begins to flag.

Foreign Authorities.

British.

In the INDEX OF TREATMENT BY VARIOUS WRITERS, edited by Robert Hutchinson, M.D., and James Sherren, C.B.E., revised to conform with American usage by Warren Coleman, M.D., Assistant Professor of Medicine, University and Bellevue Hospital Medical College, Visiting Physician to Bellevue Hospital, New York, 1921 :

LEWIS SMITH, M.D., F.R.C.P., Physician London Hospital—

Recommends iced champagne in small quantities in the treatment of Addison's disease.

GRAHAM STEELL, M. D., F.R.C.P., Emeritus, Professor Victoria University of Manchester, Consulting Physician Royal Infirmary, Manchester—

Recommends alcohol in the form of brandy in the treatment of angina pectoris.

W. J. HADLEY, M.D., F.R.C.P., F.R.C.S., Physician, Pathologist, and Lecturer in Medicine, London Hospital, Physician City of London Hospital for Diseases of the Chest—

Recommends judicious administration alcohol in cases of bronchial asthma. Believes that alcoholic stimulants are sometimes needed in the treatment of catarrhal broncho-pneumonia.

C. W. DANIELS, M. B., Camb., M.R.C.S., F.R.C.P., Lecturer Tropical Diseases London Hospital and London School for Medicine for Women. Physician, Albert Bock Hospital—

States that in the treatment of black water fever alcoholic stimulants are required after the second day.

CECIL WALL, M.A., M.B., Oxon., F.R.C.P., Physician London Hospital and Hospital for Consumption, Brompton, Consulting Physician Poplar Hospital—

Recommends stimulants in small quantities in the treatment of acute bronchitis and in the treatment of chronic bronchitis suggests increasing doses of the best brand of whisky obtainable.

E. W. GOODALL, O.B.E., M.D., B.S., Medical Supt. Northwestern Hospital, Hampstead—

Recommends strychnine, brandy and similar stimulants in cases of cardiac failure in diphtheria. Recommends brandy up to 4 oz. in 24 hours, and in desperate cases 3 to 4 oz. of good champagne every 2 or 3 hours in cases of acute infectious diseases.

W. H. CLAYTON-GREENE, C.B.E., M.B., B.C. Camb., F.R.C.S., Honorary Consulting Surgeon Richmond Royal Hospital, Lecturer of Surgery St. Mary's Hospital Medical School, Surgeon St. Mary's Hospital, King Edward VII Hospital and King George Hospital—

States that alcohol may be required in the treatment of erysipelas.

ARTHUR P. LUFF, C.B.E., M.D., B.S.C., F.R.C.P., Consulting Physician St. Mary's Hospital—

Admits that alcohol may even be necessary or desirable in the treatment of gout, a disease in which alcohol must be avoided if possible.

BYROM BRAMWELL, M.D., F.R.C.P.E., LL.D., F.R.S.E., Consulting Physician Edinburgh Royal Infirmary—

Recommends alcohol as a stimulant in relieving urgent symptoms of cases of valvular heart disease.

E. W. GOODALL, O.B.E., M.D., B.S., Medical Supt. North-western Hospital, Hampstead—

States that in the treatment of measles when complicated with severe diarrhoea, stimulant is required in the form of brandy. For the same disease he prescribes two grains sulphate of quinine every 4 hrs. with an alcoholic stimulant in the form of brandy or Champagne. Prescribes for the treatment of scarlet fever hyperdemic injections of strychnine and brandy and Champagne by the mouth.

GRAHAM STEEL, M.D., F.R.C.P., Emeritus Professor Victoria University of Manchester, Consulting Physician Royal Infirmary, Manchester—

Says of the treatment in cases of myocardial failure "alcohol, no doubt, acts largely like a nitrate dilating the arterioles and so relieving the heart."

W. J. HADLEY, M.D., F.R.C.P., F.R.C.S., Physician, Pathologist and Lecturer in Medicine London Hospital, Physician City of London Hospital for Diseases of the Chest—

States with regard to the treatment of pneumonia that he personally prefers strychnine and digitalis for

cardiac stimulation before resorting to alcohol, but recognizes its necessity in some cases. He also commends the use of alcohol in pneumonia as a soporific to induce rest and sleep.

SIR ROBERT W. PHILIP, M.A., M.D., F.R.C.P.E., F.R.S.E., Senior Physician Royal Infirmary and Royal Victoria Hospital for Consumption, Edinburgh—

States that alcohol may be administered as a stimulant in the treatment of pulmonary tuberculosis according to the individual need. Whiskey, wine, beer or stout in various amounts may be given to the patient. He says further that "the administration of alcohol offers distinct advantages in the pyrexia of advanced disease * * * as to form, pure spirits (whiskey, brandy) is usually wisest diluted in milk or mixed with eggs and milk as egg flip or in alkaline water."

F. J. POYNTON, M.D., F.R.C.P., Physician University College Hospital, Physician Hospital for Sick Children, Great Ormond Street—

Recommends alcoholic stimulant in cases of acute rheumatism. He says "brandy and dry Champagne are the most useful stimulants."

GILBERT A. BANNATYNE, O.B.E., M.D., F.R.C.P., Consulting Physician Royal Mineral Water Hospital and Royal United Hospital, Bath—

Says of the treatment of rheumatoid arthritis "stimulants are often of service, especially sound wine; but each case must be considered separately and should the stimulant increase pains it must be discontinued." In the diet lists he includes "alcoholic drinks as prescribed (whiskey, wines and malt liquors)."

ROBERT HUTCHISON, M.D., F.R.C.P., Physician London Hospital and Physician Hospital for Sick Children, Great Ormond Street—

Says of the treatment of scurvy that "cider and the French and Italian wines are also curative drinks." and in seasickness "iced champagne may be given freely."

W. H. CLAYTON-GREENE, C.B.E., M. B., B. C. Camb., F.R.C.S., Honorary Consulting Surgeon Richmond Royal Hospital, Lecturer of Surgery St. Mary's Hospital Medical School, Surgeon St. Mary's Hospital, King Edward VII Hospital and King George Hospital—

States in case of septicaemia and pyaemia that "alcohol is of undoubted value, and may be used freely."

C. W. DANIELS, M.D., Camb., M.R.C.S., F.R.C.P., Lecturer Tropical Diseases London Hospital and London School of Medicine for Women, Physician Albert Bock Hospital—

In treating yellow fever says "alcoholic stimulants should not be resorted to at the commencement, but are usually required on or after the third day."

Arthur Latham, M.D., F.R.C.P., Physician and Lecturer on Medicine at St. George's Hospital, London, in the *Oxford Index*, says of the treatment of pneumonia, page 719:

"Stimulants should not be given as a routine measure but in accordance with the condition and previous habits of the patient. As soon as the pulse becomes at all unsatisfactory alcohol should be given in the form of old brandy or champagne. At first two to five ounces of brandy in the twenty-four hours is sufficient, but the quantity may have to be pushed to ten ounces."

French.

G. LYON, *Traité Elementaire de Clinique Therapeutique*, 1920, page 1369—

Infectious Diseases: With respect to alcohol, in all its forms, certain groups of cases must be distinguished. *Alcohol is useful in all typhoid conditions*, and should be administered especially in the form of old Bordeaux or Burgundy wines of which as much as a bottle daily may be given; dry champagne, well diluted with water (a quarter of a bottle), old whiskey or rum which serve to prepare "groggs"; "Kirsch," or cherry brandy, which is usually given in milk. Alcohol itself should be given only in relatively weak doses (50-60 G. daily). In mild or moderately severe cases of typhoid fever, the above-mentioned doses of alcohol represent the maximum allowance.

Alcohol in Pneumonia: An immense therapeutic advance was made by the institution of alcohol-medication, by Todd, first limited to the treatment of pneumonia and then extended to that of all other infectious diseases. In restricting the indications of alcohol Todd gave it only in the pneumonias of alcoholic patients and in adynamic or infectious pneumonias. Loss of strength being the rule in aged and cachetic patients, alcohol is here invariably indicated, as well as in secondary pneumonias and ataxo-adynamic or typhoid pneumonias, with or without hyperthermia.

A. RICHARD, *Précis de Therapeutique et de Pharmacologie*, 1910, page 642—

"Since some years, a frequently equally exaggerated reaction seems to have set in against the old opinion, and alcoholic medication is now entirely rejected by some extremists. The majority of clinicians, however, still admit that alcohol, administered in moderate doses and temporarily, may be very useful in a cer-

tain number of febrile diseases, both as an accessory and easily oxydized food, and against the adynamic symptoms."

- A. MARTINET, *Therapeutique Clinique*, 1921, Tome II, page 1137—

"According to recent findings, alcohol is an even better food for diabetic patients than suggested by older investigations. It diminishes to a considerable extent the formation of acetones, improves the assimilation of sugar, and favors still more than the fats, the metabolism of nitrogenous foods. It is therefore rational to replace in cases of severe diabetes a portion of the fats in the diet by alcohol."

- M. MINELLE, *L'Alcohol en Therapeutique Infantile Maladies Aigües Febriles*, These de Paris, 1903. Speaking only of sick children, Minelle says—

Alcohol medication should be reserved for the treatment of general prostration and collapse, in the course of acute febrile diseases of children. Under the conditions, alcohol through an active stimulation of the central nervous system seems to exert a tonic effect upon the cardiovascular apparatus, with a strengthening action. The alcohol should always be given diluted and in small doses, stopping its use after the therapeutic effect has been accomplished.

German.

- H. CURSCHMANN, *Der Unterleibs Typhus*, Monograph, Vienna, 1898, page 428—

"In spite of all theoretical objections, alcoholic agents are indispensable for the practitioner in the treatment of typhoid fever as well as in the treatment of acute febrile diseases in general. Personally, I would not care to treat typhoid fever patients at cer-

tain stages and in certain conditions, without the assistance of alcohol." The old prejudice against a fever-increasing effect of alcoholics has been definitely removed by the findings of Ziemssen, Turgenesen, and Liebermeister. Although a theoretical explanation meets with difficulties, the stimulating effect of alcoholic agents upon the circulation and respiration has been positively established and from the practical viewpoint.

F. PENZOLDT, *Lehrbuch der Klinischen Arzneibehandlung*, 1921, page 127—

"Ethyl alcohol in the form of alcoholic beverages, under individualistic employment, constitutes an inestimably valuable remedy in the treatment of numerous, especially febrile diseases, more particularly in cases of heart failure. Alcohol was extensively used in former centuries, and is at present considered by the majority of physicians as an important adjuvant in the treatment of many diseases. Recently, voices have been raised to discredit this remedy, and based upon their laudable zeal to prevent the abuse of alcoholic beverages in general and to restrict an exaggerated therapeutic use of alcohol, some writers have gone so far as to question various curative properties, hitherto attributed to alcohol. The opposition is based too much on the partly incomplete and contradictory results of experimental investigation. Unprejudiced estimation of experiences at the bedside arrives at very different results. In the first place, it is very noteworthy that under appropriate employment—(a necessary condition for the use of any remedy)—*alcohol has never been known to cause visible damage*. Positive benefit, as shown by experience, is produced by alcohol. * * * According to Penzoldt's experience, the most extensive possible use of alcohol should be made, *unconditionally*, in grave cases of diphtheria, and septic infection, more particularly puerperal sepsis."

- C. A. EWALD, *Der Alkohol Bei Infektions Krankheiten*, Mediz. Klinik, 1913, IX, page 1233—

Although Ewald is opposed to the use of alcohol in infectious diseases and also in pulmonary tuberculosis, he points out that the stimulating action of alcohol on the heart may apparently be utilized to advantage in grave cardiac collapse, of toxic as well as of mechanical character, due to hemorrhage.

- M. GRUBER, *Der Einfluss des Alkohols auf den Verlauf der Infektionskrankheiten*, Wiener Klin. Wechschrift. 1901 XIV, page 479—

According to the judgment of experienced clinicians and careful observers, alcohol seems to have an excellent effect in certain diseased conditions, where it may be practically indispensable. Besides being indispensable in dyspepsia and in diabetes, alcohol is also considered as an indispensable analeptic agent in the treatment of collapse. *Professional experience has shown that large doses of alcohol may have a positively life-saving effect in cases of acute collapse.*

Alcohol in Nutrient Enemata.

- FORCHHEIMER, F.—*The Prophylaxis and Treatment of Internal Diseases*. D. Appleton & Company, 1906.

Alcohol in Heart Diseases. Page 384.

Alcohol is a valuable remedy in heart affections; this is proved more by the results of actual experience than by those of experiment. In small doses it acts as a stimulant producing dilatation of the blood vessels; whether it directly affects the heart beneficially has not been conclusively decided, although it is more than likely that it does so. It is of service in those conditions of the heart that are due to infections; it may be used to counteract the vasoconstrictor

effects of digitalis. In the so-called senile heart, indeed in any of the cardiac affections of old people, it is practically indispensable.

Treatment of Ulcer of the Stomach. Page 277.

The best nutrient enema is the one first recommended by Leube, a mixture of scraped meat and chopped raw pancreas, with which occasionally a patient may be kept in good condition for a long time. Between the other methods there is very little choice; my preference is for peptonized milk, with or without eggs, to which I add 30 gm. or one ounce of brandy when a stimulating effect is required.

Alcohol a Specific Antidote in Acute Poisoning by Carbolic Acid. Page 588.

In the place of the sulphates alcohol may be used, either in the form of whiskey or as alcohol very slightly diluted. Two or four ounces may be given by mouth after the stomach has been emptied; *an additional amount may be injected into the bowel.* The alcohol may be repeated at intervals of one or two hours according to the demands of the case.

MATAS, R.—*Surgery of the Vascular System.* I Surgery of the Pericardium and the Heart. Keen's Surgery, Volume V, 1909, p. 17.

Post-operative treatment: Hypodermics of strychnine with digitalis of digaten, and small doses of morphine and atropin will do good, especially when combined with the cautious administration of black coffee, hot tea, champagne, and other forms of alcoholic stimulants of the kind that the patient is accustomed to. Treatment of hemorrhage. See page 197.

"These external measures are effectively assisted by hot stimulating solution injected slowly into the rec-

tum, strong black coffee being especially available and beneficial. The formula for post-operative shock, acute anemia, or exhaustion usually prescribed by myself is: Black coffee 8 ounces; panopepton 1 ounce; *brandy or whiskey* 1 ounce; tincture of digitalis 15 minims; laudanum 10 minims; to be administered slowly and repeated every two hours if the case still calls for it. *Champagne, whiskey, or brandy, which are as diffusible by rectum as by stomach, may be freely given by enema*, diluted with physiological salt solution or combined with other ingredients, when for any reason they cannot be taken by the normal route."

Further on, Dr. Matas says that when frequent stimulation is required to strengthen the flagging heart, *champagne, whiskey and brandy toddies*, and black coffee, may be given by mouth.

EUTIS, ALLEN, C., B. S., R. B., M. D., New Orleans. Assistant Demonstrator of Chemistry, Medical Department of Tulane University; Visiting Physician to Charity Hospital. New Orleans Med. and Surg. Jrl. 1904-1905, Vol. LVII, page 18--

"My own experience with nutrient enemata is confined to the post-operative treatment of twenty-three laparatomies performed by Dr. E. S. Lewis, assisted by Dr. T. T. Lemann and Dr. C. N. Chavigny, to whose service I was assigned at the time. All of these patients were nourished exclusively by nutrient enemata for from thirty-six to forty-eight hours, and in some cases for seventy-two hours. The enemata consisted of *brandy* $\frac{1}{2}$ oz., Tr. Opii 5 minims, and peptonized milk, 4 oz. Occasionally the white of an egg was added. They were given every four hours, and to each alternate one were added eight ounces of normal salt solution. I was struck by the fact that with very

few exceptions those patients complained very little of thirst and of hunger, and we resorted to very little stimulation."

"Another case in which I used the same enemata was one of my own, in which there was a carcinoma of the pytorus very far advanced. The patient was a female fifty-two years of age, who was unable to retain anything by the mouth, but whom I was able to keep alive for three months by this method of alimentation."

WOOD, HORATIO C.—*Therapeutics, The Principles and Practice*, Tenth Edition, page 35.

Half a pint to a pint of milk with two or three eggs may be employed at each injection. When stimulants are required, half an ounce to an ounce of *brandy* may be added to each injection. The alcohol should always be added just before administration.

During the earlier stages of phthisis or consumption, alcohol taken with cod liver oil, or in small amounts with the food at meal times, conduces not so much to the comfort as to the well-being and recovery of the patient.

Administration: When a mild stimulant is wanted in the beginning of fevers, especially if milk punch seems too "heavy," wine whey may sometimes be used with advantage. It is made by pouring a *half-pint of sherry or madeira* into a pint of boiling milk, stirring thoroughly, and after coagulation has occurred, straining off the whey, which may or may not be sweetened, according to the taste of the patient. *Mulled wine* is often very grateful to patients as a change. It is made by beating an egg up thoroughly with three fluid ounces of *sherry* and adding a like quantity of water, which must be actually boiling when poured in. *Champagne* is useful in patients with delicate stomachs, especially if nausea or vomit-

ing actually exists, and also may be employed with advantage in sudden failure of the vital powers, especially in elderly persons. It must be very "dry," *i. e.*, as free as possible from sugar. Milk punch is prepared by adding from a dessert spoonful to a fluid ounce of brandy, whiskey, or rum, according to the degree of stimulation required, and the taste of the patient, to three fluid ounces of milk with sugar and nutmeg to taste.

Endocrinology and Metabolism.

Edited by
Lewellyn F. Barker

Associate Editors
R. G. Hoskins—Herman O. Mosenthal

D. Appleton & Co. 1922

Chapter on Artificial Feeding by Herbert S. Carter, p. 812—Rectal Feeding. Sample Formula.

Dextrose	20-50 gm
Alcohol	20-50 gm (cc)
Pancreatized milk	1000 cc
Salt	5-9 gm

This may be given in a 250 cc dose every 4-6 hours, and if well tolerated aids materially in helping the patient to tide over an emergency. By omitting the milk the solution is useful:

1. Simple exhaustion.
2. In Septic conditions.
3. As an antidote to chloroform; in phosphorus poisoning; or anything that causes fatty degeneration of the liver, *e. g.*, toxæmia of pregnancy and in diabetic acidosis and acetonaemia.

4. After abdominal operations, especially in under-nourished or dessicated individuals.

(Above represents 1 1-3 to 3 1-3 oz. of whiskey daily by rectum in 24 hours.)

C. S. BACON :

In pernicious vomiting of pregnancy :

Glucose 50 gm

Alcohol 50 cc

(Salts, etc.)

Distilled water to 1000 cc.

From 300 to 500 cc of mixture three times a day.

Journal American Medical Association, June 8, 1918, p. 1750.

Resolutions of House of Delegates of American Medical Association.

The American Medical Association, composed of approximately 90,000 members, is the most influential medical association in the United States. Its official body is the House of Delegates.

In the American Medical Association bulletin of the issue of October 19, 1924, at page 240, appears the following resolutions of the House of Delegates, passed at the seventy-fifth annual session of the American Medical Association, held at Chicago, June 9-13, 1924:

"National Prohibition Acts and Rulings.

"Resolutions expressing disapproval of certain sections of the National Prohibition Acts were adopted as follows:

"WHEREAS, The use of alcohol in medicine by physicians is limited, regardless of the condition of the patient, by the National Prohibition Acts; and

"WHEREAS, The confidential relation maintained between the physician and his patient is violated by the said National Prohibition Acts; and

"WHEREAS, The interests of the patient and the success of the physician require that such medicinal alcoholic liquor as prescribed in the treatment of disease be of known purity and alcoholic content; and

"WHEREAS, This can be accomplished only by the marketing of bottled in bond alcohol for medicinal purposes in containers suitable for dispensing, unopened, by the pharmacists in such sizes as will meet the patient's needs; be it

"RESOLVED, That the House of Delegates of the American Medical Association expresses its disapproval of those portions of the National Prohibition Acts which interfere with the proper relation between the physician and his patient in prescribing alcohol medicinally; be it further

"RESOLVED, That the House of Delegates of the American Medical Association instruct the Board of Trustees to use its best endeavor to have repealed such sections of the National Prohibition Acts as are in conflict with the above resolutions and also to use their best endeavor to have the Commissioner of Internal Revenue and the Prohibition Commissioner issue revised instruction on the use of the prescribing of alcoholic liquors for medicinal purposes by physicians."

These resolutions were adopted by the House of Delegates of the American Medical Association without a dissenting vote, as appears by the Journal of the American Medical Association in the issue of June 21, 1924, at page 2056.

Whiskey, at the present time, is included in the United States Pharmacopeia.

The Resolution adopted by the American Medical Association in 1924, after a full and fair trial of the restrictions imposed upon the National Prohibition Act and favoring their repeal, abrogated and superseded the Resolution of 1917, referred to in the opinion of the United States Circuit Court of Appeals for the Second Circuit.

In 1925, even more elaborate Resolutions were adopted by the House of Delegates of the American Medical Association, and of the New York State Medical Association, respectively. These Resolutions are in the following form.

The 1924 Resolution was adopted as follows:

"RESOLVED, That the House of Delegates of the American Medical Association expresses its disapproval of those portions of the National Prohibition Acts which interfere with the proper relation between the physician and his patient in prescribing alcohol medicinally; be it further

"RESOLVED, That the House of Delegates of the American Medical Association, instruct the Board of Trustees to use its best endeavor to have repealed such sections of the National Prohibition Acts as are in conflict with the above resolution and also use their best endeavor to have the Commissioner of Internal Revenue and the Prohibition Commissioner issue revised instruction on the use of the prescribing of alcoholic liquors for medicinal purposes by physicians."

The 1925 Resolutions adopted both by the House of Delegates of the American Medical Association, and of the New York State Medical Association are as follows:

"WHEREAS, Certain provisions of the Volstead Act and acts amendatory thereto prohibit, without exception or qualification, physicians from prescribing more than one pint of spirituous liquor to any patient in ten days; and

"WHEREAS, At a meeting of the House of Delegates of the American Medical Association resolutions were adopted condemnatory of such provisions, and advocating a change in the law and the adoption of proper regulations by the Prohibition Department and the Internal Revenue Commissioner; and

"WHEREAS, At the time of the passage of the Volstead Act, regulations, as distinguished from prohibitions, could have adequately dealt with the subject and yet have left unimpaired the rights and obligations of physicians to prescribe spirituous liquor for their patients when in their best judgment required, and at the same time have prevented the unworthy practitioner from prescribing liquors for beverage purposes under the guise of legitimate prescriptions; and

"WHEREAS, Regulations to that end could still be formulated and promulgated in case such provisions of the said acts be declared unconstitutional, and should be prepared without further delay; and

"WHEREAS, The present prohibitions have operated mainly to prevent large numbers of physicians of standing and professional integrity from prescribing for their patients in accordance with their best judgment as to their patients' necessities, while the unlawful acts of the unworthy practitioner have been promoted; and that further effect of such prohibitions has been that liquor of standard quality, necessary for medicinal prescription purposes, has largely become unprocurable, it is hereby

"RESOLVED, In view of the fact that such portions of the Volstead Act and the Amendatory Acts may be declared unconstitutional, that, as a substitute therefor, regulations should be forthwith drafted by the Prohibition Department to the end that the present abuses may be abated, and existing prohibitions as to

the practice of medicine removed; and that this Association use all means within its power looking to the preliminary approval of such regulations by the Prohibition Department and the Commissioner of Internal Revenue; and be it further

"RESOLVED, That the Board of Trustees be directed to appoint a committee to cooperate with the Commissioner of the Internal Revenue and the Secretary of the Treasury in the formulation of such regulations as under the National Prohibition Act, as amended, as may be necessary to carry said act into effect, so far as the medicinal use of liquor is concerned" (46, 47).

ILLUSTRATIVE CHART OF COMPARATIVE AMOUNTS OF ALCOHOL REQUIRED PER DAY IN VARIOUS DISEASES ACCORDING TO EMINENT AMERICAN, ENGLISH AND GERMAN AUTHORITIES* AND THE MAXIMUM ALLOWANCE UNDER THE VOLSTEAD ACT.

Disease	Amount required per day	Authority	Maximum allowance per day under Volstead Act
Diphtheria Septic	1-1½ pts of whisky for children 4 oz. of brandy 24-36 oz. champagne	A. Jacobi E. W. Goodall	13/5 oz. whisky 3 oz. champagne
Typhoid Fever	6-12 oz. whisky	J. M. Anders James Tyson	1 3/5 oz.
Typhus Fever	6-12 oz. whisky	James Tyson	1 3/5 oz.
Pneumonia	2-5-10 oz. brandy	Arthur Latham	1 3/5 oz.
Sepsis	"most extensive possible use of alcohol"	F. Penzoldt	1 3/5 oz.
Rectal Alimentation	1 1/3-3 1/3 oz. whisky	H. S. Carter	1 3/5 oz.

* For references see foregoing authorities.